

# **EXHIBIT 11**

KEITH LEFFLER, JUNE 17, 2004

<p style="text-align: right;">Page 1</p> <p>1 IN THE UNITED STATES DISTRICT COURT  2 FOR THE SOUTHERN DISTRICT OF OHIO  3 WESTERN DIVISION  4  5 J.B.D.L. CORP, d/b/a )  6 BECKETT APOTHECARY, et al., )  7 Plaintiffs, )  8 vs. ) No C-1-01-704  9 WYETH, )  10 Defendant. )  11 _____)  12 CVS MERIDIAN, INC. and )  13 RITE AID CORPORATION, )  14 Plaintiffs, )  15 vs. ) No C-1-03-781  16 WYETH, )  17 Defendant. ) June 17, 2004  18  19 The videotaped deposition of  20 KEITH LEFFLER, called for examination, taken  21 pursuant to the Federal Rules of Civil Procedure  22 of the United States District Courts pertaining  23 to the taking of depositions, taken before  24 (CAPTION CONTINUED)</p>	<p style="text-align: right;">Page 3</p> <p>1 PRESENT: (Continued)  2 THE WEXLER FIRM, LLP,  3 (One North LaSalle Street, Suite 2000,  4 Chicago, Illinois 60602,  5 312-346-2222), by:  6 MR. TIMOTHY A. SCOTT,  7 appeared on behalf of the indirect  8 payor plaintiffs.  9  10 ALSO PRESENT:  11 ANDREA SHEPARD, Ph.D.,  12 Principal, Cornerstone Research.  13 MR. JASON D. SMITH,  14 Wyeth.  15 MR. BRIAN BRUCE,  16 Videographer.  17  18  19  20  21  22  23 REPORTED BY: KAY A. LEVINE, CSR, RPR  24 CSR Certificate No. 84-3654.</p>
<p style="text-align: right;">Page 2</p> <p>1 KAY A. LEVINE, CSR No. 84-3654, a Notary Public  2 within and for the County of Cook, State of  3 Illinois, and a Certified Shorthand Reporter of  4 said state, at Suite 4700, 35 West Wacker Drive,  5 Chicago, Illinois, on the 17th day of June, A.D.  6 2004, at 9:40 a.m.  7  8 PRESENT:  9 WINSTON &amp; STRAWN, LLP,  10 (35 West Wacker Drive,  11 Chicago, Illinois 60601-9703,  12 312-558-6113), by:  13 MR. GORDON DOBIE and  14 MS. PEGGY BALESTERI,  15 appeared on behalf of the Defendant  16 Wyeth;  17 HANGLEY, ARONCHICK, SEGAL &amp; PUDLIN,  18 (30 North Third Street, Suite 700,  19 Harrisburg, Pennsylvania 17101,  20 717-364-1004), by:  21 MR. GORDON EINHORN,  22 appeared on behalf of Plaintiffs  23 CVS Meridian, Inc. and Rite Aid  24 Corporation;</p>	<p style="text-align: right;">Page 4</p> <p>1 (WHEREUPON, a certain document  2 was marked Leffler Deposition  3 Exhibit No. 1, for  4 identification, as of 6/17/04.)  5 THE VIDEOGRAPHER: Good morning. We are  6 going on the video record at 9:40 a.m. My name is  7 Brian P. Bruce, Senior. I'm a legal videographer  8 associated with Esquire Deposition Services  9 located at 155 North Wacker Drive in Chicago,  10 Illinois. The court reporter today is Kay Levine,  11 also from Esquire Deposition Services.  12 Here now begins the videotaped  13 deposition of Keith Leffler, taking place at  14 35 West Wacker Drive, suite 4200A in Chicago,  15 Illinois. Today's date is June 17th in the year  16 2004. This deposition is being taken in the  17 matter captioned CVS Meridian, Incorporated and  18 Rite Aid Corporation versus Wyeth.  19 This matter is pending in the United  20 States District Court for the Southern District of  21 Ohio, Western Division, and bears Case No.  22 C-1-03-781. This deposition is being taken on  23 behalf of the defendant, and the party at whose  24 instance this deposition is being recorded on an</p>

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<p style="text-align: right;">Page 153</p> <p>1 degree. Could they switch some? Yes.</p> <p>2 Q. Well, you mentioned Kaiser earlier. Do</p> <p>3 you think, for example, with Kaiser that they</p> <p>4 could move share in a fairly dramatic way?</p> <p>5 A. Yes. Certainly as compared to a</p> <p>6 typical PBM.</p> <p>7 Q. Right. So just as an example, would it</p> <p>8 be anti-competitive for Wyeth to offer Premarin to</p> <p>9 Kaiser at a deep discount in exchange for high</p> <p>10 market share in your view?</p> <p>11 A. I don't know. Kaiser is probably not</p> <p>12 alone enough to have any significant competitive</p> <p>13 impact.</p> <p>14 Q. So if Wyeth offered essentially an</p> <p>15 exclusive type arrangement with a closed plan like</p> <p>16 a Kaiser, just sort of given the size of that</p> <p>17 market, you're saying that might not raise</p> <p>18 competitive concerns?</p> <p>19 A. Probably not. I think that's what they</p> <p>20 did, and I'm certainly not emphasizing that</p> <p>21 anywhere in this document.</p> <p>22 Q. And you don't disagree that Kaiser</p> <p>23 could then sort of switch if they wanted to and</p> <p>24 move patients to Cenestin.</p>	<p style="text-align: right;">Page 155</p> <p>1 probably start doing analysis of the type of what</p> <p>2 percent of the markets foreclose, the standard</p> <p>3 exclusive dealing type analysis, and it could or</p> <p>4 could not be anti-competitive.</p> <p>5 Q. But you didn't undertake that type of</p> <p>6 analysis in terms of what percentage of the market</p> <p>7 was foreclosed for this case, right?</p> <p>8 A. No, I don't view this as a foreclosure</p> <p>9 case, or a case of exclusive dealing.</p> <p>10 Q. Are you aware of the amount of time</p> <p>11 that it typically takes for a PBM to review a</p> <p>12 product before they put it on formulary?</p> <p>13 A. Oh, I've read -- certainly not from</p> <p>14 personal experience, but I've certainly reviewed</p> <p>15 things that relate to that.</p> <p>16 Q. And have you seen the evidence that</p> <p>17 indicates that it's typically anywhere from</p> <p>18 six months to a year, year and a half, before a</p> <p>19 PBM or an HMO will review a new product?</p> <p>20 A. I'm sure it varies widely, but what it</p> <p>21 would average, I would probably be comfortable</p> <p>22 with that encompassing most of the cases. At the</p> <p>23 same time I'm sure if some blockbuster drug comes</p> <p>24 out, the review can be very quick. Or if some</p>
<p style="text-align: right;">Page 154</p> <p>1 A. I presume that at least Wyeth must have</p> <p>2 felt they could, because I'm aware that the price</p> <p>3 offered Kaiser was pretty close to marginal cost.</p> <p>4 And so I don't think Wyeth would do that unless</p> <p>5 they believed that Kaiser could effectively do</p> <p>6 something like that, so I will go with their</p> <p>7 judgment.</p> <p>8 On my own I would probably -- wouldn't</p> <p>9 be sure I'd have to start thinking about the</p> <p>10 doctors and what they're going to do in response</p> <p>11 and lots of complicated stuff.</p> <p>12 Q. If it would be okay for Wyeth to offer</p> <p>13 a contract like this to a Kaiser, why would it not</p> <p>14 be okay to offer it to, let's say, a Rocky</p> <p>15 Mountain or even somebody a little bit bigger like</p> <p>16 an Aetna?</p> <p>17 A. By this you mean simply a low price for</p> <p>18 exclusivity?</p> <p>19 Q. Yes, sir.</p> <p>20 A. If those were the contracts at issue</p> <p>21 here, I would do probably more typical analysis of</p> <p>22 exclusive contracts. These are not exclusive</p> <p>23 contracts in my mind at all, so that's not the</p> <p>24 analysis I'm bringing to bear on it. But I would</p>	<p style="text-align: right;">Page 156</p> <p>1 drug comes out that offers tremendous cost</p> <p>2 savings, that that process can be sped up a lot.</p> <p>3 Q. Now, have you factored that into your</p> <p>4 analysis at all in terms of determining what</p> <p>5 Premarin would have been priced at in the "but</p> <p>6 for" world?</p> <p>7 A. No. I mean yes, in the extent of</p> <p>8 that's factored in, I presume, to Wyeth's analysis</p> <p>9 themselves.</p> <p>10 Q. But here's what I'm getting at. If</p> <p>11 Wyeth didn't really even have to worry about</p> <p>12 Cenestin being put on a formulary for six months</p> <p>13 or so after they launched the product, wouldn't it</p> <p>14 make more sense to begin the damage analysis at</p> <p>15 six months after launch?</p> <p>16 A. No. I mean, it might, but I don't</p> <p>17 think it does here.</p> <p>18 Q. Why?</p> <p>19 A. What's significant is when, at what</p> <p>20 point, is Wyeth's pricing decisions altered</p> <p>21 because of their recognition that they can take</p> <p>22 actions to preempt Cenestin's entry attempts. And</p> <p>23 what I've seen indicates that that occurred in</p> <p>24 early 1999.</p>

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<p style="text-align: right;">Page 157</p> <p>1 Q. So early '99, and you mentioned earlier 2 that that's when Wyeth had a price increase. 3 A. I think in March was the actual price 4 increase. 5 Q. And here's what I'm confused by. How 6 could -- certainly Wyeth had whatever market power 7 it had before Cenestin came on the marketplace, 8 right? 9 A. Yes. 10 Q. I mean, it didn't get more market power 11 by Cenestin, one additional product joining the 12 marketplace, coming into the market, correct? 13 A. Correct. 14 Q. Why then does it make sense to -- why 15 are you assuming that Premarin would have been 16 priced at a lower price at some time period before 17 Wyeth even had to worry about Cenestin, either on 18 the marketplace or being reviewed by managed care 19 organizations for formulary placement? 20 A. I think Wyeth correctly perceives its 21 pricing problem as a long-run problem, and it's 22 not in its best interest to exploit things on a 23 very short-term basis. So it's making its pricing 24 decisions just in the context of what's our best</p>	<p style="text-align: right;">Page 159</p> <p>1 otherwise. 2 Q. Let me make sure I understand this. 3 Your basic theory of damages is that Wyeth would 4 have continued to price in the "but for" world -- 5 let me restate it. 6 In the "but for" world, your theory of 7 damages is that Wyeth would have continued to 8 price as it had in the past, right? 9 A. Yes, in the recent past. 10 Q. In the recent past. And that in the 11 actual world is it your assumption that Wyeth was 12 able to raise its prices because of new contracts 13 with managed care organizations? 14 A. Not necessarily new contracts, but that 15 through the existing contracts and the plan and 16 pressure and information it was providing to the 17 holders of those contracts that that was 18 recognized as an effective tool in combatting 19 Cenestin's entry into the marketplace. 20 Q. All right. And is it your belief that 21 Wyeth's market power actually increased after the 22 launch of Cenestin? 23 A. No. 24 Q. Have you examined at all the extent to</p>
<p style="text-align: right;">Page 158</p> <p>1 price now. 2 I think consumers react and these 3 purchasers would react in a very adverse manner if 4 what Wyeth did is it said, Well, it's March so 5 we're going to jack up that price by 50 percent 6 and then we'll lower it six months later when we 7 need to lower it, that it's just not the way a 8 business firm is going to be successful in its 9 business relationships with its customers. 10 Q. And what evidence have you seen that 11 that was, in fact, Wyeth's thinking process which 12 you're speculating happened, that Wyeth was 13 anticipating Cenestin and raising its price in 14 anticipation of its launch even before the product 15 was on the market and even before it would have 16 been reviewed by managed care organizations for 17 formulary placement? 18 A. My conclusion, I think, is to the 19 contrary, that what happened is Wyeth recognized 20 that, in fact, it would be able to take actions to 21 increase the difficulty of Cenestin's entry and 22 thereby realized that the constraints that it saw 23 on its pricing were removed and thereby were able 24 to effectuate profitably higher increases than</p>	<p style="text-align: right;">Page 160</p> <p>1 which Cenestin may have performed better in the 2 non-MCO and PBM sector of the market? 3 A. Only the evidence that I've seen from 4 Wyeth's experts. I've done no independent 5 examination of that issue. I don't dispute the 6 evidence that I've read from others. 7 Q. The evidence that Cenestin hasn't done 8 better, in fact, does worse in the cash and 9 Medicaid portion of the market. 10 A. As I say, I haven't examined the data 11 itself, but I've seen what the statistics offered 12 by some certainly reasonable economist. 13 Q. Have you examined at all or looked at 14 what's happened to Cenestin's sales in the period 15 from 2002 through the present into 2004? 16 A. Again, I -- the most recent data I've 17 seen is -- I think ends in about '03, and that's 18 plaintiffs' data. The IMS data ends before that, 19 so that's the extent of my knowledge. 20 Q. Are you aware of whether or not Wyeth 21 continues to have sole conjugated estrogen 22 language contracts? 23 A. No. 24 Q. And so in doing a damage analysis, you</p>

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<p style="text-align: right;">Page 189</p> <p>1 Q. What evidence are you aware of that 2 Duramed either did or didn't seek reimbursement 3 agreements with managed care organizations? 4 A. The evidence is that I know they had 5 some, so they obviously accepted them if they had 6 the opportunity to accept them, or at least at 7 certain -- at the levels that they, in fact, had 8 such contracts, they revealed that they liked such 9 a deal. 10 Q. And if the evidence indicated that, for 11 example, Duramed decided not to seek a rebate 12 agreement for PCS, would that impact your 13 conclusions in any way? 14 A. Not without knowing a lot more. 15 Q. Let me show you a document that was 16 previously marked as Exhibit 120. And for the 17 record Exhibit 120 is a document that was produced 18 by Duramed. And let me ask you about the first 19 page because it involves PCS Health Systems. 20 A. Yes. 21 Q. And PCS is the pharmacy benefit manager 22 that was owned by Rite Aid during 1999, correct? 23 A. Yes. 24 Q. And if you look down in the fourth</p>	<p style="text-align: right;">Page 191</p> <p>1 Q. Do you -- I don't think it's on your 2 list. Is it? 3 A. (No response.) 4 Q. 10733, no, it's not on your list. 5 A. Okay. I've seen things like it then, 6 you know, summaries of contracts. 7 Q. And looking at this, do you think it 8 would be unreasonable for Duramed to seek an 9 agreement with PCS, in light of the fact that its 10 product was available and covered on an 11 unrestricted basis for 40 million of the 12 42 million PCS lives? 13 A. Would it be -- ask it -- what am I -- 14 Q. Do you think it would be unreasonable 15 for Duramed to take the position that it would not 16 seek a rebate agreement with PCS in light of the 17 fact that Cenestin is available and covered on an 18 unrestricted basis for 40 million of the 42 19 million PCS lives? 20 A. That's certainly not sufficient for me 21 to reach that conclusion. 22 Q. All right. Either way? I mean, in 23 other words, you don't know whether it's a good 24 discussion or not a good decision?</p>
<p style="text-align: right;">Page 190</p> <p>1 paragraph on the very first page, it notes that: 2 The coverage for Cenestin in the vast 3 majority of PCS plans without a rebate agreement 4 is a position few products enjoy. It is likely 5 that Viking Health Care Solutions will continue to 6 recommend this strategy in the future as it 7 provides extensive Cenestin coverage with no 8 rebate liability. 9 Do you see that? 10 A. Yes. 11 Q. All right. Now -- and if you look 12 under 6/99, June '99, so that's down another one, 13 two, three, four, five -- six paragraphs, it notes 14 that, in summary, Cenestin is available and 15 covered on an unrestricted basis for 40 million of 16 the 42 million PCS lives, or approximately 17 95 percent of their book of business. 18 Do you see that? 19 A. I do. 20 Q. And looking at this document -- let me 21 ask you first. Have you ever seen this document 22 before? 23 A. It looks familiar. I'd have to look at 24 the list. You probably know.</p>	<p style="text-align: right;">Page 192</p> <p>1 A. I don't -- I don't know. I'd have to 2 know what their market share is, what they think 3 their market share could be if they offered some 4 discount. We're basically asking can they 5 motivate PCS to take some actions that increase 6 the sales of Cenestin and then want to know is 7 the increased revenue from any increased sales 8 more than offset by the reduced price. 9 Q. And you haven't made that analysis to 10 this point. 11 A. No. 12 Q. All right. Why don't we change tapes 13 here. 14 THE VIDEOGRAPHER: This will conclude 15 videotape number two. We are now going off the 16 record. The time is 3:07 p.m. 17 (WHEREUPON, a recess was had.) 18 THE VIDEOGRAPHER: We are now back on the 19 record. The time is 3:22 p.m. This is videotape 20 number three of the deposition of Keith Leffler, 21 taking place at 35 West Wacker Drive, Suite 4200A, 22 in Chicago, Illinois, on June 17th in the year 23 2004. 24 My name is Brian P. Bruce, Senior. I'm</p>

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<p style="text-align: right;">Page 193</p> <p>1 a legal videographer associated with Esquire  2 Deposition Services located at 155 North Wacker  3 Drive in Chicago, Illinois. Counsel?  4 BY MR. DOBIE:  5 Q. Dr. Leffler, let me follow up on a  6 question that you answered before the break. You  7 mentioned that you believe that Wyeth's market  8 power did not increase after the launch of  9 Cenestin. Is it your view that Wyeth had greater  10 market power in 2000 or in 1998?  11 A. I'm not sure, but approximately the  12 same, but if anything, more in '98.  13 Q. Well, if it had more market power in  14 1998, how do you explain that Wyeth didn't  15 increase its prices more in 1998?  16 A. What's important in 1998 is its  17 perceptions not only of its current market power  18 but its anticipated future market power, and what  19 changed is its anticipations about its future  20 market power.  21 Q. So it's your view that Wyeth wasn't  22 pricing consistent with its true market power in  23 1998.  24 A. No. It's that Wyeth is not priced</p>	<p style="text-align: right;">Page 195</p> <p>1 power in 2000 or its belief about its market power  2 in 2000 and in the future were that it had more  3 market power than it anticipated back in 1998.  4 And therefore it set higher prices than it  5 otherwise would have set and that that change  6 flowed from its ability to use contracts to impede  7 Cenestin.  8 BY MR. DOBIE:  9 Q. All right. And let me make sure I'm  10 understanding. Is it because of Wyeth's  11 perception that it had more market power than it  12 did through these agreements that allowed it to  13 then raise its prices?  14 A. I believe its perception was correct,  15 but, in fact, it's the firm's perceptions of its  16 market power which always controls their pricing.  17 And that's true not only here but in every single  18 case. I think, in fact, its perceptions were  19 accurate, but I only use the word, perceptions,  20 because that's always what we're talking about.  21 Q. Let me make sure I understand that.  22 Are you saying that its prices were set on the  23 basis of its actual market power or based on its  24 perceptions?</p>
<p style="text-align: right;">Page 194</p> <p>1 moment by moment depending upon its current  2 perceptions, but that it sets overall pricing  3 strategies based on its current and anticipated  4 future market position.  5 Q. Well, if it had more market power in  6 1998 then 2000, then certainly it was in a  7 position that it could have raised or that some of  8 its decision to raise its prices in the period  9 after Cenestin was on the marketplace had to do  10 with its market power as opposed to the existence  11 of the rebate agreements, correct?  12 A. I didn't get it.  13 Q. I mean, if Wyeth had additional market  14 power that would have allowed it to raise its  15 prices more than it did in the earlier period,  16 then to the extent that it later did raise its  17 prices in, let's say, '99 or 2000, wouldn't you  18 say that some of that decision to raise prices had  19 nothing to do with the -- its reimbursement  20 agreements with managed care organizations?  21 MR. EINHORN: Objection.  22 BY THE WITNESS:  23 Q. Well, I believe to the contrary that  24 what happened was its perceptions of its market</p>	<p style="text-align: right;">Page 196</p> <p>1 A. Prices are always based on perceptions,  2 not actuals. Firms don't know their actuals.  3 Q. If Wyeth's market power did not  4 increase in the '99 to 2001 period as compared to  5 1998, what's your explanation for the increasing  6 rate of price increases in this later period?  7 A. A change in its expectations of reduced  8 market power because of the entrance of Cenestin  9 that impacted its pricing in the '98, '97 period,  10 and then its recognition that, in fact, the  11 reduced market power has not come to pass. And  12 therefore its perceptions of its market power are  13 higher than they were before and therefore it  14 reacts to that by setting higher prices.  15 Q. You mentioned this morning that to the  16 extent that there are other factors that resulted  17 in Wyeth increasing the prices of Premarin apart  18 from the contracts, that that would not be  19 anti-competitive on their part.  20 And let me ask you about some of those.  21 Maybe you -- to the extent that Wyeth decided to  22 increase the prices of its product, Premarin,  23 because of the introduction of a true generic of  24 the product, would you agree that that's something</p>

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